

1 W. Chris Wicker  
Nevada Bar No. 1037  
2 Jessica Hanson Anderson, Esq.  
Nevada Bar No. 8200  
3 WOODBURN AND WEDGE  
4 6100 Neil, Road, Suite 500  
Post Office Box 2311  
5 Reno, Nevada 89511  
Telephone: (775) 688-3000  
6

7 Attorneys for Defendant, Brian Snyder

8 UNITED STATES DISTRICT COURT  
9  
10 DISTRICT OF NEVADA

11 HIRAM C. SEDANO, LIDIA SEDANO, Case No: 2:11-cv-1144 JCM-PAL  
12 Plaintiffs,

13 v.

14 STATE OF NEVADA, ATTORNEY  
GENERAL CATHERINE CORTEZ  
15 MASTO, DEPUTY ATTORNEY  
16 GENERAL KIMBERLY OKEZIE, BRIAN  
SNYDER, DIRECTOR OF EMPLOYER  
17 & PRODUCTION SERVICES NEVADA  
PUBLIC EMPLOYEES' RETIREMENT  
18 SYSTEM,

19 Defendants.  
20 \_\_\_\_\_/

**DEFENDANT, BRIAN SNYDER'S,  
MOTION TO DISMISS FOR LACK OF  
SUBJECT MATTER JURISDICTION**

21 Defendant, BRIAN SNYDER, by and through his counsel of record, WOODBURN  
22 AND WEDGE, hereby submits his Motion to Dismiss pursuant to Federal Rule of Civil  
23 Procedure (Fed. R. Civ. P. 12(b)(1)). This Motion is made based upon the attached  
24 Memorandum of Points and Authorities and Plaintiffs' Complaint on file herein.  
25

26 ///

27 ///

28 ///

///

## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. BACKGROUND**

Plaintiffs filed their Complaint on July 11, 2011. Although they attempted service on Mr. Snyder, they failed to comply with the procedure for service of process. *See* Defendant's Opposition to Motion for Judgment by Default. However, Defendant voluntarily make an appearance in this matter and waives service of process in order to make this motion.

### **II. PLAINTIFF'S COMPLAINT FAILS TO COMPLY WITH LR 8-1**

Local Rule 8-1 requires Plaintiffs to plead jurisdiction.

The first allegation of any complaint, counterclaim, cross-claim, third-party complaint or petition for affirmative relief shall state the statutory or other basis of claimed federal jurisdiction and the facts in support thereof.

L.R. 8-1. Plaintiffs first paragraph purports to plead subject matter jurisdiction by alleging:

Jurisdiction in this case is proper. All State of Nevada judges and staff members are disqualified due to receiving benefits from Nevada Public Employees' Retirement System.

Complaint, paragraph 1. Plaintiffs fail to state any statutory or other basis for this Court's jurisdiction as required by the local rules of this Court. Plaintiffs provide no legal argument, statutory or otherwise, which supports Plaintiffs' claims for jurisdiction, even if the allegation was true.

Plaintiffs claim that all Nevada State Court's judges are disqualified "due to receiving benefits from Nevada Public Employees' Retirement System". This allegation is not true as a matter of law. Only judges who retired from PERS, as a result of prior PERS eligible employment, can be receiving PERS benefits while sitting as a judge<sup>1</sup>.

Pursuant to NRS 286.541(2), a future judge who was employed in PERS eligible public employment may retire by terminating his or her employment and applying for retirement

<sup>1</sup> Some retired judges may be receiving a PERS benefit.

benefits. NRS 286.545(2). Even though receiving benefits, a newly elected judge can take office and enroll in the Judicial Retirement System ("JRS"). NRS 1A.270, 1A.280. This is a very limited situation where a sitting state judge may also be receiving PERS benefits. New judges who have been PERS members may also withdraw from PERS and transfer their PERS credit to the JRS. NRS 1A.280. Finally, newly elected judges, who were not prior PERS members, must enroll in the JRS. NRS 1A.270. Therefore, as a matter of law, only a limited number of state judges would actually be receiving benefits from PERS, not all state judges as alleged by Plaintiffs. Complaint, paragraph 1.

Plaintiffs allege they were past or current PERS members. Complaint, paragraph 3. As a matter of law, many state judges are not even enrolled in PERS but in JRS. NRS 1A.270. JRS is a different fund than PERS, which Plaintiffs are associated with. NRS 1A.100. Plaintiffs' allegations of all state judges having conflicts of interest, are not accurate based Nevada law.

Even if receiving benefits from PERS actually disqualified judges and even if that provided federal court subject matter jurisdiction, which Defendant denies, Plaintiffs clearly ignored that fact that as a matter of law, many Nevada judges are not receiving PERS benefits and are only enrolled in a separate retirement fund. Plaintiffs claim that they cannot get justice from Nevada judges fails as a matter of law.

### III. THE COURT LACKS SUBJECT MATTER JURISDICTION

#### A. This Motion is Timely

Pursuant to FRCP a defense of lack of subject matter jurisdiction may be asserted by Motion. Fed. R. Civ. P. 12(b)(1). The lack of subject matter jurisdiction may be asserted at any time. Fed. R. Civ. P. 12(h)(3). The Court lacks subject matter jurisdiction where there is no federal question or diversity of citizenship not shown. *Lee v. Am. Nat'l Ins. Co.*, 260 F.3d 999, 1004 (9<sup>th</sup> Cir. 2001).

1                   **B.       There is No Diversity Jurisdiction**

2           28 U.S.C. §1332(a) governs what is required to establish diversity jurisdiction. In order  
3 to establish a claim via diversity, the Plaintiffs must show that the amount in controversy  
4 exceeds \$75,000, and that there is diversity of citizenship between the Plaintiff and all  
5 defendants. 28 U.S.C. § 1332(a). To bring a diversity action in federal court against multiple  
6 defendants, each plaintiff must be a citizen of a different state from each defendant. The  
7 Plaintiffs do not allege diversity jurisdiction, as their only claim is that all Nevada state judges  
8 are disqualified. They do not claim an amount in controversy nor do they claim diversity of  
9 citizenship. The Nevada Attorney General is a state officer pursuant to the Nevada Constitution  
10 Art. 5 §19. On the face of the Complaint, each individual Defendant is a Nevada citizen.  
11 Plaintiffs are citizens of Nevada. Thus, diversity simply does not exist and the Complaint  
12 should be dismissed for lack of diversity jurisdiction.  
13

14                   **C.       There is No Federal Question**

15           28 U.S.C. §1331 provides that “the district courts shall have original jurisdiction of all  
16 civil actions arising under the Constitution, laws, or treaties of the United States.” Federal  
17 question jurisdiction extends only in those cases in which a well-pleaded complaint establishes  
18 “either that federal law creates the cause of action or that the plaintiff’s right to relief  
19 necessarily depends on the resolution of a substantial question of federal law. *Franchise Tax*  
20 *Bd. Of Cal. v. Construction Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 27–28 (1983). In  
21 order for a complaint to state a claim “arising under” federal law, it must be clear from the face  
22 of the plaintiff’s well-pleaded complaint that there is a federal question. *Easton v. Crossland*  
23 *Mortgage Corp.*, 114 F.3d 979, 982 (9th Cir. 1997).  
24

25           Plaintiffs’ Complaint relies entirely on Nevada law. No allegation implicates a federal  
26 question. Thus there is no federal question jurisdiction.  
27

28       ///

This Court needs to address only one issue. As a matter of law, this Court does not have subject matter jurisdiction over the Plaintiffs' Complaint. The Complaint must be dismissed.

WOODBURN AND WEDGE

By:

W. G. White

W. Chris Wicker, Esq.  
Nevada State Bar No. 1037  
Jessica Hanson Anderson, Esq.  
Nevada Bar No. 8200  
6100 Neil, Road, Suite 500  
Reno, Nevada 89511

Attorneys for Defendant, Brian Snyder


**CERTIFICATE OF SERVICE**

I certify that I am an employee of Woodburn and Wedge and that on this date a true copy of the foregoing DEFENDANT, BRIAN SNYDER'S, MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION was served electronically on the following parties:

Hiram C. Sedano  
Lidia Sedano  
1113 Bay Laurel Court  
Las Vegas, NV 89110

CATHERINE CORTEZ MASTO  
ROBERT A. WHITNEY  
Bureau of Government Affairs  
Government and Natural Resources Division  
555 East Washington Ave., Suite 3900  
Las Vegas, NV 89101

DATED this 5<sup>th</sup> day of August, 2011.

By:   
Kelly N. Weaver